

**Chapter 594: STATE CONTRIBUTION TO OVERBOARD DISCHARGE REPLACEMENT PROJECTS**

**SUMMARY:** This chapter implements 38 M.R.S.A. § 411-A. The intent of this chapter is to clarify how the State contribution for replacement projects to eliminate overboard discharges required by 38 M.R.S.A. § 414-A (1-B) and 38 M.R.S.A. § 413(3) will be administered by the Department of Environmental Protection.

**1. Definitions.**

- A. Applicant.** An "applicant" is a person, a municipality, a quasi-municipal organization, or county commissioners acting on behalf of an unorganized township or plantation.
- B. Commercial establishment.** A "commercial establishment" is a building primarily used for the purposes of trade or commerce, a non-profit organizational endeavor, or a municipal or quasi-municipal government purpose.
- C. Construction costs.** "Construction costs" for the purposes of grants made under this chapter mean costs associated with the installation of the wastewater disposal system up to and including connections through the foundation wall, as necessary. If a replacement system cannot be installed on property owned or controlled by the applicant, and the Department determines it necessary to carry out the overboard discharge removal, then easement or land acquisition costs and associated legal fees necessary for the installation, operation, maintenance and replacement of an approved replacement system may be included, provided that these costs are not prohibited by any applicable Federal rules or laws.
- D. Individually administered project.** An "individually administered project" is a project to remove an overboard discharge in which the owner of the overboard discharge acts as the grant applicant and is responsible for the implementation and completion of the project.
- E. Multiple use property.** A "multiple use property" is a building or buildings with combined uses defined separately as a "commercial establishment", "residential rental property", or "single family dwelling".
- F. Overboard discharge.** For the purposes of these rules an "overboard discharge" is a licensed discharge to the surface waters of the State of domestic pollutants not conveyed to and treated in municipal or quasi-municipal sewerage treatment facilities from a property that has a valid or expired waste discharge license issued by the department.
- G. Public nuisance condition.** A "public nuisance condition" means an existing overboard discharge to a receiving water that is:
  - (1) A Class GPA, A, or SA water;
  - (2) A tributary to a class GPA water;
  - (3) A water body with a drainage area of less than 10 square miles; or

(4) A violation of 38 M.R.S.A. §§ 464, 465, 465-A or 465-B.

**H. Residential rental property.** A “residential rental property” is a building or buildings that are rented or leased for residential use for at least six months of the year and do not meet the definition of a “commercial establishment”.

**I. Replacement system.** A “replacement system” means a wastewater disposal system installed in accordance with Chapter 241, Subsurface Wastewater Disposal Rules of the Department of Health and Human Services effective October 1, 2002 or connection to a public sewerage treatment facility.

**J. Shellfish harvesting area.** A “shellfish harvesting area” is an area where shellfish, including any species of clams, quahogs, mussels or oysters are or may be located, including known productive areas; areas where shellfish may be found; habitat where it is reasonable to assume shellfish may be found in the future; and areas where shellfish may be stored (wet storage), processed or cultivated, as determined by the Department of Marine Resources.

**K. Single family dwelling.** A “single family dwelling” is a human habitation occupied continuously or seasonally by the property owners that does not meet the definitions of “commercial establishment” or “residential rental property”.

**L. Town administered project.** A “town administered project” is a project to remove one or more overboard discharges in which the municipal, quasi-municipal, or county government acts as the grant applicant and is responsible for the implementation and completion of the project.

**2. Funding.** Funding is in accordance with 38 M.R.S.A. § 411-A and subject to the availability of funds under 38 M.R.S.A. § 411.

**3. Priority.** The commissioner shall authorize grants according to an annual priority list developed using input from the Department of Environmental Protection, Department of Marine Resources, town governments, local shellfish committees and other interested parties. Technical feasibility and estimated costs and benefits derived from proposed projects will be considered in developing the priority list. Eligible projects must be assigned one of the following priorities in order to be eligible for grant funding:

**A. High priority.** Reimbursement for elimination of discharges to shellfish harvesting areas or elimination of public nuisance conditions, as listed on the current priority list; or

**B. Low priority.** Reimbursement for elimination of discharges to shellfish harvesting areas or elimination of public nuisance conditions that do not qualify for funding as high priority projects.

**4. Eligibility.** Persons, municipalities, quasi-municipal organizations and county commissioners may be eligible to receive funds to eliminate overboard discharges that cannot be relicensed under 38 M.R.S.A. § 414-A(1-B) or that are required by property transfers under 38 M.R.S.A. § 413(3). No projects will be eligible for funding until the department reviews and approves the project. A person who removed an overboard discharge after September 30, 1989 according to plans and specifications approved by the commissioner in advance of construction may be reimbursed subject to Section 2 above.

- 5. Application for funds.** An application is a written document from the project applicant. The document must include the applicant's name and address, discharge license number(s) of the overboard discharge(s) proposed to be removed, a description of the project, the priority category, information documenting ownership of the property and income verification using the proper tax forms.
- 6. Use of grant funds.**
- A. Eligible costs.** State funds may be used to pay for the following work and services, provided that the cost and scope of the work has been determined by the commissioner to be reasonable and necessary to remove the overboard discharge. In determining reasonable and necessary costs for the replacement system, the commissioner shall take into account costs and benefits obtained by construction of the system, the expected successful operation of the system and any other relevant factors.
- (1) Design of the replacement system.
  - (2) Construction costs for the replacement.
  - (3) Inspection of the replacement system by a qualified person(s).
  - (4) Administrative services, associated with the project.
  - (5) Costs to abandon the overboard discharge system in accordance with Chapter 596 of the Department's rules referring to overboard discharge licensing and abandonment.
  - (6) Other necessary project costs as determined by the commissioner.
- B. Non-eligible costs.** State funds may not be used for the following costs.
- (1) Excessive property restoration beyond a reasonable amount necessary to comply with Chapter 241, Maine Subsurface Wastewater Disposal Rules of the Department of Health and Human Services effective October 1, 2002 or other applicable design standards.
  - (2) Other unnecessary costs or excessive charges as determined by the commissioner.
- C. Income criteria.** Grant funding percentages are determined according to the income of the property owner(s). See 38 M.R.S.A § 411-A. For multiple use properties, the overall grant percentage will be determined by the pro rata share of each use based on the design flows as shown on the replacement system design.
- D. Expanded use of property.** The State's contribution will be determined based on the existing use of the structure. If an expanded or different use of the structure is proposed, the state's share will be limited to the pro rata share based on the current wastewater flow from the structure as determined by the lesser of the current licensed discharge limit or design flow as determined by Chapter 241, Maine Subsurface Wastewater Disposal Rules of the Department of Health and Human Services effective October 1, 2002 based on current use.
- 7. Requirements for inclusion in program.**

**A. Eligible systems.** Only replacement systems for buildings whose owners are required to eliminate a licensed discharge to comply with 38 M.R.S.A. § 414-A (1-B) or 38 M.R.S.A. § 413(3) are eligible for funding.

**B. Non-eligible systems.** Replacement systems are ineligible for funding in the following situations.

(1) A building that did not have a licensed overboard discharge prior to September 30, 1989.

(2) A building that is otherwise not in compliance with laws of the State or the municipality.

**C. Funding as a town administered project.** Individual systems may be funded as a town administered project, if and when the following requirements are met:

(1) The individual system meets the eligibility criteria of Section 7(A); and

(2) The owner of the individual system has submitted to the appropriate local government entity a signed agreement form. This agreement must:

(a) Grant access to the site for design, construction and inspection of the required facilities;

(b) Require payment of owner's share of project prior to work; and

(c) State that the owner is responsible for maintenance, repair or replacement of any malfunction of the system.

**D. Funding as an individually administered project.** Individual systems may be funded as an individually administered project if and when the following requirements are met:

1) The individual system meets the eligibility criteria of Section 7(A); and

2) The owner of the individual system has submitted a complete signed application for funds and received approval for the replacement system design and contractor procurement from the department.

**8. Design of treatment system.** The applicant shall secure the services of a qualified individual or consulting firm for a system design. A licensed site evaluator may design subsurface wastewater disposal systems up to 2,000 gallons per day (gpd) in size. A professional engineer is required to design and prepare contract documents for wastewater disposal systems in excess of 2,000 gpd. A copy of the final wastewater system design must be submitted to the department for approval prior to the start of construction.

## **9. Cost quotes, contract awards and State payments.**

**A. Bidding procedure.** All applicants are required to solicit bids or quotes from area contractors using contract documents for the project.

1) Individually administered projects. A minimum of three competitive quotes from qualified contractors must be obtained.

2) Town administered projects. Sealed competitive bids are required for all contracts. An advertisement for bids must be published in a local newspaper at least seven (7) days before bids are opened. The bid advertisement may require separate bids for each individual system or a single bid for multiple systems with an individual price for each system. The contract will be awarded as follows:

- (a) A separate contract for each individual system will be drawn and payment will be a lump sum for each individual system; or
- (b) A single contract for a group of individual systems may be drawn with payment being made as a lump sum for construction of each individual system.

**B. Contract documents.** Contract documents must include forms such as: bid proposal; contract agreement; general conditions; construction specifications; and construction plans. These forms may be provided by the Department or similar forms may be used if approved by the department.

**C. Award of construction contracts.** Prior to awarding the construction contract, the department must be notified of the bid results to determine if the costs are reasonable. The applicant shall award construction contracts to the lowest bidder, provided that the contractor(s) selected have demonstrated ability to perform this kind of work and will comply with all state laws and the contract documents required by Section 9(B) of this chapter.

**D. State payments.**

- (1) Town administered projects. Payments for eligible costs up to the limit of funding are remitted to the appropriate local government entity as they are incurred.
- (2) Individually administered projects. Reimbursement for project costs will be made when the project is complete and the contractor has certified that payment in full has been received.
- (3) Payment Requests. A payment request form detailing the eligible expenses must be submitted with appropriate documentation attached.
  - (a) Copies of design invoices, construction contracts, contractor certification form, inspection invoices, advertisement invoices and change order statements are the usual documentation required for payment, however, the department may require additional documentation in certain cases to determine the appropriateness of payment.
- (4) Low priority projects may be funded from unencumbered funds after October 1 of the calendar year, unless sooner added to the annual priority list. If unencumbered funds are not available during the calendar year, then the reimbursement request will be held and paid if and when funding becomes available.

**10. Inspection of treatment system.** All construction of subsurface disposal systems under grants pursuant to this chapter must be inspected as required by Chapter 241, Maine Subsurface Wastewater Disposal Rules of the Department of Health and Human Services effective October 1, 2002. Public sewer connections must be inspected as required by the local sewer use ordinance and other applicable standards.

AUTHORITY: 38 M.R.S.A. § 411-A

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